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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(A).No.31 of 2004

Commissioner of Income Tax I
Chennai. .. Appellant

Vs.

M/s.Ashok Leyland Ltd.,
Chennai 600 001. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai dated 23.6.2003 in ITA No.661/Mds/1995 for the assessment year 1991-92. against the order of the Commissioner of Income Tax (Appeals) I Madras - 34 dated 25.01.1995 ITA NO. 111/94-95 AGAINST the order of the Assistant Commissioner of Income Tax Central Circle II (1) Madras dated 28.03.1994 in NO. 47-066-CX-2964

For Appellant : Mr.N.Muralikumaran, Sr.S.C for M/s. Pushya Sitaraman
For Respondent : Mr.Venkatanarayanan for M/s. Subbarayar Iyer

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J U D G M E N T

(Delivered by P.D. DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.661/Mds/1995, dated 23.6.2003, raising the following substantial question of law.

" Whether in the facts and circumstances of the case, the Tribunal was right in holding that the premium payable on redemption of debentures in future years is to be spread over and part of it allowed as a deduction in this year?"

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2. The facts which are necessary for the disposal of this appeal are as under:

2.1. The assessee made provision for premium that is payable on redemption of debentures, as the debenture holders contributed the amounts on the assurance that on expiry of the period specified in the debenture, they would be paid a sum which is more than what was contributed. For the assessment year 1991-92, the assessee claimed deduction of Rs.11,52,000/- towards provision for premium payable on redemption of debentures in future years, but the assessing officer disallowed the same on the ground that it is only a contingent provision and the liability would arise only at the time of redemption of debentures.

2.2. The Commissioner of Income-tax (Appeals), on appeal, allowed the deduction as claimed by the assessee, which was confirmed by the Appellate Tribunal, on appeal by the Revenue.

2.3. Hence, the appeal by the Revenue raising the question of law referred above.

3. When a company issues debentures at a discount, it incurs a liability to pay a larger amount than what is borrowed. The liability to pay the discounted amount over and above the amount received for the debentures, is a liability which has been incurred by the company for the purposes of its business in order to generate funds for its business activities. The amounts so obtained by issue of debentures are used by the company for the purposes of its business. Hence, the liability to pay the discount would therefore be a revenue expenditure. [vide: **Madras Industrial Investment Corporation Ltd. V. Commissioner of Income Tax**, 225 ITR (SC)802].

4. The Calcutta High Court in the case of **National Engineering Industries Ltd., V. C.I.T** (**236 ITR 577**), held as follows:

> "There is no distinction between a discount and a premium. The result in both is that something over and above the face value and the specified interest is paid, the accounting procedure in one case being by way of a preliminary deduction from the mentioned amount, and the accounting procedure is the other case being an addition at the end over the prescribed and mentioned face value amount. The extra premium is to be spread over all the years which are occupied between the date of issue and the date of ultimate redemption."

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5. Applying the above ratio, this Court in T.C.Nos.209 of 2006 and 1099 of 2004, by judgment dated 22.02.2006, held that the premium payable on actual redemption of debentures in future years is to be spread over and part of it is allowable as a deduction in this assessment year in question.

In this view of the matter, we answer the question of law in the affirmative and against the Revenue. The appeal stands dismissed. No costs.
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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Assistant Registrar,
Income Tax Appellate Tribunal
Bench A Rajaji Bhavan, III Floor, Besant Nagar
Chennai - 90

2.The Commissioner of Income-
Tax (Appeals-I), Madras.

3. The Asst. Commr. of Income-tax,
Central Circle II(1), Madras. 34

4. The Commissioner of Income Tax I Chennai

+ one cc to M/s. Pushya Sitarman, Advocate sr no. 11546

TEJ(CO)
NM(13.03.07)

T.C.(A).No.31 of 2004

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